

**REQUEST FOR PROPOSAL
FOR THE PERFORMANCE OF**

ELECTION BOARD COUNSEL SERVICES

October 2019

REQUEST FOR PROPOSAL FOR THE PERFORMANCE OF ELECTION BOARD COUNSEL SERVICES

INTRODUCTION

The Election Board (the Board) solicits proposals from qualified proposers for entering into a contract for the performance of Election Board counsel services. Each proposer must submit to the Election Board **one original and five (5) copies** of their proposal. Proposals must be submitted to the attention of **Mr. Shawn Koon-Nolff**, GTB Election Board Chairman, and addressed as follows:

Grand Traverse Band of Ottawa and Chippewa Indians
2605 N. West Bay Shore Drive
Peshawbestown, MI 49682

Attn: Mr. Shawn Koon-Nolff, GTB Election Board Chairman

The Board by this Request for Proposal (RFP) does not promise to accept the lowest or any other proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, to negotiate the requested services and contract terms with any proposer, or to proceed to do the work otherwise. Incomplete proposals and proposals not sufficiently detailed or not in acceptable form may be returned for completion or may be rejected by the Board.

NONDISCRIMINATION and EQUAL OPPORTUNITY

The Board does not discriminate in the selection of contractors on the basis of race, color, creed, religion, national origin, sex, marital status, or disability. The successful proposer must agree to comply with all applicable federal and tribal equal opportunity and tribal preference laws, directives and regulations.

ELECTION 2020

The GTB Constitution directs that the Election Board is responsible for conducting and certifying all GTB elections. The typical election cycle for GTB begins with the publication of proposed rules in January of an election year for an election to occur in May. After the election in May the Election Board has experienced both internal appeals and external appeals to the GTB Tribal Court. It is anticipated that the May 2020 election for three tribal councilor and one chairman position will engender the same level of voter, candidate, litigant, and institutional participation as the last series of elections in 2016, 2014, & 2012. These elections required Election Board special counsel to represent the Election Board in the development of election regulations, the contest of those regulations, the conduct of an election, the contest of an election, the certification of an election, the contest of the certification of an election, and individual tribal court proceedings against individual election board officials alleging impropriety on the part of the Election Board and requesting that the GTB judiciary address some or all of the GTB election process. The successful election board special counsel will need to address any and all aspects of this brief outline.

Currently the past Election Boards have published substitutive rules on the conduct of elections. The authority for these rules is in the GTB constitution which provides in relevant part the following:

Section 5. Election Board.

- (a) The Tribal Council shall appoint an Election Board, composed of five (5) registered voters of the Grand Traverse Band, to hold elections, certify election results, and settle election disputes other than allegations of impropriety by the Election Board. The decisions of the Election Board shall be final and conclusive on the Grand Traverse Band.*
- (b) The term of office for an Election Board member shall be four (4) years.*
- (c) Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary.*
- (d) Tribal members presently holding Tribal Council office or running for office shall not be eligible to serve as an Election Board member.*
- (e) The Election Board shall be authorized to issue such rules and procedures as may be necessary to carry out tribal elections and to provide for ongoing voter registration.*
- (f) Any candidate for tribal office may choose a representative to be present when the election ballots are counted by the Election Board.*
- (g) A Band member shall have five (5) business days from the date of the election to file an election challenge.*

The successful special counsel for the Election Board will represent the GTB Election Board through any and all phases of the GTB election process.

SUBMISSION DEADLINE

Written proposals must be received at the Board's offices in Peshawbestown no later than **4:00 p.m. on Monday, October 7, 2019**. All written proposals received at the Board's offices by the deadline will be considered by the Board.

INQUIRIES

All questions relating to this RFP, including all questions relating to clarifications or modifications of this RFP must be submitted in writing and directed to the attention of Mr. Mike Teeple at the above-listed address. If any question submitted makes necessary the issuance of a written addendum to this RFP, the addendum will be furnished to all persons receiving a copy of the RFP. The Board will not respond to questions received after **October 7, 2019**.

In order to ensure a fair review and selection process, law firms submitting proposals are specifically requested not to make other contacts with the Board staff or Board members regarding their proposals. Board Members include Chairman Shawn Koon-Nolff, Vice Chairperson William Fowler, Secretary Diane Sullivan, Board Member Lawrence "Camp" Bailey, and Board Member Alvin "Al" Pedwaydon.

BACKGROUND

The GTB Election Board is defined by the GTB Constitution as a regulator of Tribal elections; the Board is a public entity and subdivision of the Tribe. The Board is under the supervision and control of its election board governing body. The members are appointed by the Tribal Council.

The Election Board is responsible for maintaining and operating the elected government system of the Grand Travers Band. The statutory provisions governing the Council and the operation of its governance systems are found at:

<https://www.narf.org/nill/constitutions/grandtraverseconst/index.html>

TERM OF CONTRACT

The Board anticipates entering into a term contract for Election Board counsel services during the time period from the start of the contract until the completion of fiscal year 2020.

SCOPE OF WORK

All Election Board counsel services will be performed under the direction of the Election Board by majority vote. The legal services sought under this RFP could include:

- Review of existing GTB election statutes and court decisions to determine that authority is properly exercised for the 2020 GTB election and advise the Board of legal matters relating to the 2020 election.
- Prepare necessary documentation and regulations for the 2020 election.
- Review the completed record of each previous election.
Provide authoritative written opinions on the legal validity and binding legal obligations of proposed regulations and the management of the 2020 election.
- Provide authoritative written opinions on the unqualified validity of election regulations.
- Oversee execution and preparation of all election regulations.
- Propose innovative procedures which may assist the Board in minimizing costs of conducting the 2020 elections.
- Assist the Board in evaluating the legal aspects of all proposed regulations and developing the best overall plan for implementation the election regulations.
- Offer direction and advice on the appropriate procedures to be followed by the Board in connection with the authorization and implementation of election regulations or other election related matters.
- Respond to questions, develop information, and provide advice for the Board on legal aspects of elections matters and the conduct of the elections.
- Attend meetings with Board members and staff, as requested and other advisors on elections.
- Cooperate and confer with the GTB Council on appropriate matters.

- Prepare and/or review all election documents to ensure that there is adequate and appropriate disclosure and advise the Board accordingly. Verify the accuracy of language and supervise election board printing, as appropriate.
- Advise the Board on the impact and legality of pending state and federal legislation. Draft legislation, as requested, which might be necessary or desirable to improve the Board's legal environment to hold and conduct elections.
- Hold and conduct hearings on election disputes. Advise the Board on the conduct of election hearings.
- Provide the Board with advice, when requested, on certifications and other legal advice required to meet the constitutional requirements of GTB laws and regulations.
- Provide such other legal advice and legal services to the Election Board as is deemed necessary or appropriate.
- Defend the Election Board in all appeals of the Election Board decisions.

The successful proposer will be expected to manage files efficiently and work closely with the Election Board. As a public and governmental entity, the Election Board requires strict accountability in work descriptions, task performance and billing practices.

PROPOSAL FORM AND CONTENTS

Each proposer must submit to the Election Board an original and five (5) copies of the proposal. The proposal should not exceed 12 pages and should be printed on 8½ x 11 inch paper. Pages should be consecutively numbered. The proposal should be directed to the attention of Shawn Koon-Nolff, Election Board Chairman at the address listed at page 1 of this RFP. The proposal must include the following elements:

- **Background.** The proposal must give a general overview or description of your background.
- **Personnel and Staffing.** The proposal must provide a detailed description of your firm's staff size and composition, including the number of partners, associates, law clerks and legal assistants. The proposal also should identify whether the proposer's clerical services are provided by in-house staff, through contract or through other arrangements. The proposal must identify specific attorneys and other staff likely to be assigned to perform the requested Election Board services on behalf of the Election Board. The proposer should provide up-to-date detailed professional resumes for these individuals. The proposer also should identify the individual who will be designated as the primary contact person with the Election Board for assignments, billings and general contract administration. The proposer must list senior staff changes over the last three years. For departures, indicate the reason for the change.
- **Relevant Election Board Experience.** The proposal must clearly outline the proposer's experience and background in providing election counsel services, including:

- Provide the following information for federal Indian tribes and other governmental entities that the firm has been involved with over the last five years:

1. Name of Tribe;
2. Date and tenure of service;
3. Nature of the project;
4. Description of method of providing service;
5. Type of opinions offered; and
6. Name of principal individual in the Tribe or governmental entity assigned to the project.

- Describe the firm's experience with Election Boards.
- Describe the firm's familiarity with tribal elections regulations and tribal disputes.
- Describe the firm's familiarity with the federal laws and tribal laws as they relate to the Election Boards regulation of elections.
- Describe the firm's familiarity with federal Indian law, GTB law and tribal elections.
- Describe the firm's capability to provide authoritative written opinions in election matters acceptable to the GTB electorate, Tribal Council, candidates and the Election Board.
- Describe the process that would be used for reviewing and assessing existing GTB election policy and procedures and recommending appropriate election changes. Also, give an estimate of costs related to this work.
- Indicate whether within the last five years, your organization, or an officer or principal of your organization, has been involved in any election litigation or other legal proceedings relating to your election counsel activities. If so, provide an explanation and indicate the current status or disposition.
- Detail the scope of services to be provided and identify any additional services beyond those described in this RFP that your firm would provide as election counsel to the Board.
- **Responsiveness to Client Needs.** The proposal must provide a statement indicating the proposer's ability to respond to the Election Board's needs on short notice and to comply

with tight timelines and assignments. The statement should include a general description of the resources available to the proposer to help the proposer respond in a timely manner to requests for legal services.

- **Billings.** The proposal must indicate the proposer's capability to provide detailed billing statements which: clearly identify the file or matter and the attorneys and other staff assigned to that matter; provide a detailed list of hours expended each day by a specific attorney or other assigned staff; clearly identify the nature of the specific work performed; identify election staff or others with whom the attorney or other assigned staff worked, called, consulted, etc.; and clearly identify and detail all expenses incurred on the matter and an expense-to-date summary by file or project. The proposer should submit with its proposal an example of the actual billing format used by the proposer.
- **Written Cost Estimates.** The proposal must indicate the proposer's willingness to provide written cost estimates for specific assignments.
- **Fees.** The proposal must outline the proposer's billing structure and proposed hourly rates for Election Board counsel services. The proposal should indicate the proposer's willingness to negotiate a final fee schedule and hourly rates as part of the overall contract. The proposal should describe the extent to which fees will be discounted if the contract term were to be extended for one year beyond the original period.
- **Reimbursable Costs and Expenses.** The proposal should indicate the proposer's expense reimbursement policies. The Election Board will reimburse only actual out-of-pocket expenses and will not reimburse expenses on a cost-plus or similar basis.
- **Insurance.** The proposal must describe the extent and nature of malpractice and other relevant insurance covering the proposer's performance of bond counsel services for the Election Board.
- **Actual or Potential Conflicts of Interest.** The proposal must indicate whether the proposer or individual attorneys within the proposer's firm represent any clients or interests in lawsuits or other legal actions between them and the Election Board. The proposal also must indicate whether any activities of the proposer or individual attorneys within the proposer's firm potentially pose a conflict of interest in the proposer's representation or association with the Election Board. The proposer must immediately advise the Council in writing of any real or possible conflicts that arise after the submission of the proposal.
- **Proposer's Offer.** The proposal (or the proposer's transmittal letter) must include the following statement by an authorized representative of the proposer:

This proposal constitutes an offer by the undersigned to enter into a contract to perform the described legal services for the compensations specified in this proposal and containing the terms and conditions in the standard Election Board contract for legal services or required by applicable federal law or regulation.

- **References.** The proposal must provide appropriate references, including firm or agency names, contact persons and telephone numbers the Election Board may contact regarding representation by the proposer. References from Tribal governments should be included.

FORM OF CONTRACT

A copy of a standard Election Board legal services contract is attached to this RFP as Exhibit A. The standard contract outlines various legal and administrative duties and responsibilities assumed by persons or organizations contracting with the Election Board. Some of the terms of the standard contract may be *modified* and some terms may be added to meet the requirements of this legal services contract and the requirements of applicable federal laws.

Prior to entering into a legal services contract with the Election Board, the proposer may be required to provide certain certifications.

SELECTION

A review panel designated by the Election Board will review the proposals. The panel will review proposals using the following criteria to determine which, if any, proposal is the most advantageous to the Election Board's needs:

- The proposed cost of the legal services. The proposed cost of the legal services is important but is not necessarily the controlling factor in determining contract award.
- The proposer's integrity, expertise and record of past performance in election matters and related legal work, including the experience and background of specific persons who may be assigned by the proposer to perform legal services on behalf of the Election Board.
- The ability of the proposer to perform successfully the requested legal services and comply with public policy.
- The ability of the proposer to respond in a timely manner to requests for legal services.
- The extent to which the proposal is complete and responsive to the RFP specifications.
- The extent to which the proposal demonstrates the proposer has represented, or can represent, a governmental entity like the Election Board.
- Other relevant criteria as may be developed by the Election Board or the review panel.

Based on an application of these criteria and its review of the proposals, the review panel may select some proposers for interviews and conduct interviews. The panel will make a final selection recommendation to the Election Board.

EXHIBIT A

GTB ELECTION BOARD
2605 N. West Bayshore Drive
Peshawbestown, MI 49682

CONTRACT FOR LEGAL SERVICES

CONTRACT NO.:

MATTER: Legal Services--

CONTRACT AMOUNT:

This contract is made and entered into by and between the GTB Election Board, 2605 N. West Bayshore Drive, Peshawbestown, MI 49682 (herein referred to as "Election Board") and _____ (hereinafter referred to as "Special Counsel").

THE ABOVE-NAMED PARTIES hereby agree as follows:

Section 1. RECITALS AND REPRESENTATIONS.

The Election Board wishes to retain the services of Special Counsel to render certain legal services described below.

Special Counsel is desirous of performing such services and represents that it is experienced in matters relating to the services described below, is capable of performing them, and that the person executing this contract is authorized to do so.

Section 2. SCOPE OF SERVICES.

A. Special Counsel will perform and provide legal services for the Election Board in connection with the following matters: GTB General Election for 2020.

B. The legal services authorized under this contract shall include other legal services that are initiated or requested, either orally or in writing, by the Election Board Chairman, or such other persons as may be designated, by the Election Board Chairman; however, such authorization shall not be necessary if, in the Special Counsel's judgment, immediate action is required to protect the Election Board's interests.

Section 3. SPECIAL COUNSEL PERSONNEL.

_____ shall serve as Special Counsel's representative and shall assume primary responsibility for coordinating all legal services with the Election Board. It is understood by the parties that Special Counsel may assign responsibility to such attorneys or paralegals in its employment as in its judgment is necessary and desirable to efficiently perform the legal services, subject to objection by the Election Board. All attorneys providing legal services pursuant to this agreement shall be currently licensed, and in good standing, with the Michigan Bar.

Services under this contract shall be performed only by attorneys or paralegals employed by Special Counsel and no services, including retention of associate counsel, consultants or experts, shall be subcontracted without prior approval of the Election Board.

Special Counsel represents that it and all attorneys providing legal services under this contract are covered by professional liability insurance adequate for the protection of the Election Board with regard to the services provided.

Section 4. TOTAL COMPENSATION.

The total amount payable to Special Counsel under this contract shall not exceed during the term of the contract \$ _____, including reimbursement for all expenses and disbursements.

The Election Board agrees to pay Special Counsel attorneys' fees at \$ _____ per hour up to a maximum of \$ _____. Fees for the services of non-attorney personnel will be billed at the hourly rate current at the time their services are provided. Any expenses and disbursements which are anticipated to be of a substantial cost and any reimbursement for travel outside of the metropolitan area must be approved in advance by the Election Board.

Special Counsel shall monitor expenditures incurred under this contract and shall promptly notify the Election Board if an unanticipated level of work activity may result in exceeding the authorized amount.

Section 5. BILLING PROCEDURE.

A detailed statement of services rendered shall be submitted to the Election Board on or before the 20th day of each month following the month in which services are rendered or the month in which a particular bond issue has been closed. Each statement shall include the following information:

A. A narrative of the services rendered, the name of the lawyer or paralegal rendering such service, the hourly rate, and the number of hours or partial hours worked in connection with such service;

B. Documentation of all reimbursable expenses and disbursements made on behalf of the Election Board; and

C. The total amount chargeable for the month.

Section 6. **TERM AND TERMINATION OF CONTRACT.**

The term of this contract is from _____ to _____; however, the Election Board may terminate this contract at any time by providing Special Counsel written notice of such termination at least fifteen (15) days prior to the effective date of such termination.

Upon termination Special Counsel shall furnish to the Election Board copies or duplicate originals of all legal documents or memoranda prepared for the Election Board not previously furnished and all work in progress. Such materials must be provided in an electronic form compatible with one of the following word processing software standards: Microsoft word for Windows XP, or such other standard as agreed to by the Election Board.

Upon termination Special Counsel shall be entitled to compensation for all legal services performed and reimbursement for the actual cost of all out-of-pocket expenses and disbursements made under the contract prior to the effective date of the termination.

Section 7. **ELECTION BOARD DATA.**

The Election Board, through its Chairman, shall cooperate with Special Counsel to facilitate the performance of legal services without undue delay, and the Election Board shall furnish to Special Counsel information, data, reports and records of the Election Board which are necessary for this purpose.

Section 8. **FINDINGS CONFIDENTIAL.**

Any information, data, reports, records, or other materials given to or prepared or assembled by Special Counsel under this contract shall be kept confidential and Special Counsel shall not make any of this material available to any individual or organization without prior approval of the Election Board.

If any data on individuals is made available to Special Counsel by the Election Board pursuant to this contract, Special Counsel shall maintain any such data in accordance with Requirements of Public Records of the GTB under the GTB Constitution.

Section 9. REPORTS.

Copies of all memoranda of law, correspondence and other work products prepared or assembled by Special Counsel under this contract will be forwarded to the Election Board and become public records after the completion of the 2010 election.

Section 10. CONFLICT OF INTEREST.

Special Counsel certifies that it has divulged to the Election Board any and all actual or potential conflicts of interest within the meaning of the Michigan Rules of Professional Conduct. During the term of this contract, Special Counsel shall not represent any current clients in any matter if such representation is or may be adverse to the Election Board, or represent any current clients if such representation may materially limit Special Counsel's responsibilities to the Election Board. Special Counsel will immediately divulge to the Election Board Chairman any actual or potential conflict of interest of which it becomes aware during the term of this contract.

Further, Special Counsel certifies that to the best of its knowledge no Election Board employee has any pecuniary interest in the business of the Special Counsel or with this contract and no person associated with the Special Counsel has any interest that would conflict in any manner or degree with the performance of this contract.

Section 11. AUDIT.

Special Counsel agrees to keep and maintain books, records, documents, and other evidence pertinent to its performance under this contract in accordance with generally accepted accounting principles. Special Counsel shall maintain such books, records, documents and other evidence until the latest of the following occurs:

- A. Complete performance of this contract; or
- B. Three (3) years from the date of final payment under this contract; or
- C. If any litigation, claim, or audit is commenced during said three (3) years period, when all such litigation, claims or audits have been resolved.

During the time of such maintenance, authorized representatives of the Election Board shall have access during normal business hours to all such books, records, documents and evidence for the purpose of inspection, audit, and copying. Special Counsel shall provide proper facilities for such inspection, audit or copying.

IN WITNESS WHEREOF, the Election Board and Special Counsel have caused this contract to be executed on the respective dates set forth below.

GTB Election Board

Date: _____

By: _____
Shawn Koon-Nolff
Chairman

[Name of Firm]

Date: _____

By: _____
Its Partner